IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1803

Supreme Court, U. S.
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THE DIVISION OF BEVERAGE, DEPARTMENT OF BUSINESS REGULATION, an agency of the STATE OF FLORIDA,

Petitioner,

v.

BONANNI SHIP SUPPLY, INC.,

Respondent.

****

REPLY BRIEF OF PETITIONER

****

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QUESTIONS PRESENTED

1. Whether Florida's requirement that exporters of alcoholic beverages obtain licenses under §561.14(4), Florida Statutes (1975), creates an undue burden on interstate commerce in violation of the Commerce Clause.

2. Whether the Florida Supreme Court erred in holding that §561.14(4), Florida Statutes (1975), was an unreasonable burden on interstate commerce because of the presence of concurrent federal regulation of exporters.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

ARTICLE I, §8

(Clause 3) The Congress shall have power . . . to regulate commerce with foreign nations, and among the several states and with the indian tribes: . . .

AMENDMENT XXI

Section 2. The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

FLORIDA STATUTES (1975)

Section 561.14 License classification.--

Licenses referred to in the beverage law shall be classified as follows:

(4) Exporters licensed to transport tax exempt alcoholic beverages into this state under bond, to be exported under bond for delivery beyond the borders of this state. Each license shall entitle the licensee to store such beverages under bond at one location in this state pending shipment beyond the borders of this state. Florida Statutes, 1975, Volume II, page 932.

REASONS FOR GRANTING THE WRIT

I. FLORIDA'S REQUIREMENT THAT EXPORTERS OF ALCOHOLIC BEVERAGES OBTAIN LICENSE UNDER §561.14(4), FLORIDA STATUTES, DOES NOT CREATE AN UNDUE BURDEN ON INTERSTATE COMMERCE IN VIOLATION OF THE COMMERCE CLAUSE.

The judgment upon which appeal was taken to the Florida Supreme Court succinctly holds:

(Appendix to Petition for Writ of Certiorari at page 15).

> 5. It is, therefore, the holding of this Court that the requirement that Plaintiff obtain an exporter's license from the State of Florida to engage in the business of importing and exporting "in bond" merchandise for distribution and use in foreign commerce, violates the provisions of the Commerce Clause of the United States Constitution (Article I, Section 8, Clause 3). Accordingly, Section 561.14(4), Florida Statutes is hereby declared unconstitutional and invalid as being violative, and in contravention, of the Constitution of the United States of America.

Section 561.14(4), Florida Statutes, as held violative of the Commerce Clause states:

> Section 561.14 License Classification.--
>
> Licenses referred to in the beverage law shall be classified as follows:
>
> (4) Exporters licensed to transport tax exempt alcoholic beverages into this state under bond, to be exported under bond for delivery beyond the borders of this state. Each license shall entitle the licensee to store such beverages under bond at one location in this state pending shipment beyond the borders of this state. Florida Statutes, 1975, Volume II, page 932.

The Respondent contends that the Supreme Court of Florida properly framed the principal issue and thereafter correctly applied the prior decisions of this Court. The issue presented (Appendix to Petition for Writ of Certiorari at pages 20-21) is whether the state's supplementary regulations constitute an unreasonable burden on interstate commerce. Yet, the holding of the Court struck down not only the supplementary regulations but the implementing statute, Section 561.14(4), Florida Statutes.

It is inconceivable that the Supreme Court of Florida could have even considered the state's regulations implemented pursuant to Section 561.14(4), Florida Statutes, based upon the holding of the trial court, supra. The gravaman of the appeal sub judice is whether Section 561.14(4), Florida Statutes, is repugnant to the Commerce Clause.

The holding of the Florida Supreme Court is obscurred by these references to the state's supplementary regulations. The issue was and remains whether the act of the Florida Legislature, Section 561.14(4), Florida Statutes, constitutes an undue burden on interstate commerce. Rhetorically, Petitioner asks whether the State of Florida may classify and license exporters of alcoholic beverages where such classification alone creates no burden and creates no limitation on the power of Congress to regulate foreign commerce. The opposite view has been consistently rejected by this Court in Hostetter v. Idlewild Bon Voyage Liquor Corporation, 377 U.S. 324, 84 S.Ct. 1293, 12 L.Ed. 2d 350 (1963) and supporting cases cited in the Petition for Writ of Certiorari at page 6. Even Epstein v. Lordi, 261 F.Supp. 921, (D.N.J. 1966), aff'd. per curiam 389 U.S. 29 (1967), relied upon by the Florida Supreme Court and noted by Respondent, recognized that where state action does not interfere with the free flow of foreign commerce beyond that which is reasonably necessary to prevent the distribution of liquor into intrastate commerce, the Commerce Clause is not violated. See Epstein v. Lordi, supra, 261 F.Supp. at 936, n. 13, quoting the above rationale announced in Duckworth v. Arkansas, 314 U.S. 390, 62 S.Ct. 311, 86 L.Ed. 294 (1941). The mere fact that an exporter may be required to obtain a license does not in itself suggest that the state's activity constitutes a burden on interstate commerce. That is the crux of this appeal.

The Florida Supreme Court has suggested that their decision does not prohibit the state from requiring exporters to register for identification purposes only. (Petition for Writ of Certiorari at page 24). Yet, by affirming the lower court's holding that Section 561.14(4), Florida Statutes, is

unconstitutional the state is effectively precluded from following that mandate.

The Florida Court is opining that the state may not regulate, oversee, monitor, or classify exporters of alcoholic beverages for any purpose in the face of the existence of concurrent federal regulation. Such conclusion is contrary to the holdings of this Court in Duckworth, supra, and Carter v. Commonwealth of Virginia, 321 U.S. 132, 135-136, 64 S.Ct. 465, 466 (1944).

II. THE FLORIDA SUPREME COURT ERRED IN HOLDING THAT §561.14(4), FLORIDA STATUTES, WAS AN UNREASONABLE BURDEN ON INTERSTATE COMMERCE BECAUSE OF THE PRESENCE OF CONCURRENT FEDERAL REGULATION OF EXPORTERS.

Respondent misplaces the importance of Epstein v. Lordi, supra, as relied upon by the Florida Supreme Court. In Epstein, New Jersey required that exporters obtain wholesaler's licenses, which are, as in Florida, comprehensive and restrictive. The Epstein decision is simply inapplicable here in that the intricate requirements imposed upon Florida wholesalers are primarily designed to regulate intrastate commerce and the multitude of sins commensurate with that trade and practice. Florida recognizes the essential differences between exporters and wholesalers and therefore classifies them under separate provisions of law, which New Jersey did not. Even the license fees are different in Florida--$500 for an exporter, versus $4,000 for a wholesaler. The holding in Epstein was based upon the burdens placed upon the wholesaler which restricted the free

flow of foreign commerce. Epstein never held that exporters could not be classified, for license purposes, as was the holding of the Florida Supreme Court in this case.

The Florida Court was troubled by the issue in Epstein, i.e., whether the police power exercised by the state was reasonably related to the prevention of the diversion of non-taxed liquor into intrastate commerce. Though this may be a legitimate concern the striking of Section 561.14(4), Florida Statutes, is tantamount to the destruction of a sturdy table because the surface is blemished. Such action of the Florida Supreme Court should be reviewed and reversed.

CONCLUSION

For the reasons set forth above, Petitioner prays that the Petition for Writ of Certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three (3) copies of the foregoing Reply Brief have been furnished by U.S. Mail to Robert V. Williams, Esquire, 606 Madison Street, Post Office Box 1363, Tampa, Florida 33601, Attorney for Respondent, this 18th day of August, 1978.

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